

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

JOHNATHAN WILLIAM MIKULA,  
CHRISTIAN FERNANDEZ, AMIT  
RAJ BERI, SWAY ENERGY  
CORPORATION, AVTAR SINGH  
DHILLON, EMERALD HEALTH  
PHARMACEUTICALS INC., and  
JAMES M. DEMESA

Defendants.

Case No. 2:22-cv-7096

**CONSENT TO ENTRY OF FINAL  
JUDGMENT BY EMERALD  
HEALTH PHARMACEUTICALS  
INC.**

1       1. Defendant Emerald Health Pharmaceuticals Inc. (“Defendant”) waives  
2 service of a summons and the complaint in this action, enters a general appearance,  
3 and admits the Court’s jurisdiction over Defendant and over the subject matter of this  
4 action.

5       2. Without admitting or denying the allegations of the complaint (except as  
6 provided herein in paragraph 11 and except as to personal and subject matter  
7 jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the  
8 final Judgment in the form attached hereto (the “Final Judgment”) and incorporated  
9 by reference herein, which, among other things:

10             (a) permanently restrains and enjoins Defendant from violation of  
11 Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a);

12             (b) permanently restrains and enjoins Defendant from violation of  
13 Section 10(b) of the Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b),  
14 and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and

15             (c) orders Defendant to pay a civil penalty in the amount of \$517,955  
16 under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of  
17 the Exchange Act, 15 U.S.C. § 78u(d)(3).

18       3. Defendant acknowledges that the civil penalty paid pursuant to the Final  
19 Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a)  
20 of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund  
21 distribution is made, the civil penalty shall be treated as a penalty paid to the  
22 government for all purposes, including all tax purposes. To preserve the deterrent  
23 effect of the civil penalty, Defendant agrees that it shall not, after offset or reduction  
24 of any award of compensatory damages in any Related Investor Action based on  
25 Defendant’s payment of disgorgement in this action, argue that it is entitled to, nor  
26 shall it further benefit by, offset or reduction of such compensatory damages award  
27 by the amount of any part of Defendant’s payment of a civil penalty in this action  
28 (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty

1 Offset, Defendant agrees that it shall, within 30 days after entry of a final order  
2 granting the Penalty Offset, notify the Commission's counsel in this action and pay  
3 the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as  
4 the Commission directs. Such a payment shall not be deemed an additional civil  
5 penalty and shall not be deemed to change the amount of the civil penalty imposed in  
6 this action. For purposes of this paragraph, a "Related Investor Action" means a  
7 private damages action brought against Defendant by or on behalf of one or more  
8 investors based on substantially the same facts as alleged in the Complaint in this  
9 action.

10       4. Defendant agrees that it shall not seek or accept, directly or indirectly,  
11 reimbursement or indemnification from any source, including but not limited to  
12 payment made pursuant to any insurance policy, with regard to any civil penalty  
13 amounts that Defendant pays pursuant to the Final Judgment, regardless of whether  
14 such penalty amounts or any part thereof are added to a distribution fund or otherwise  
15 used for the benefit of investors. Defendant further agrees that it shall not claim,  
16 assert, or apply for a tax deduction or tax credit with regard to any federal, state, or  
17 local tax for any penalty amounts that Defendant pays pursuant to the Final  
18 Judgment, regardless of whether such penalty amounts or any part thereof are added  
19 to a distribution fund or otherwise used for the benefit of investors

20       5. Defendant waives the entry of findings of fact and conclusions of law  
21 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

22       6. Defendant waives the right, if any, to a jury trial and to appeal from the  
23 entry of the Final Judgment.

24       7. Defendant enters into this Consent voluntarily and represents that no  
25 threats, offers, promises, or inducements of any kind have been made by the  
26 Commission or any member, officer, employee, agent, or representative of the  
27 Commission to induce Defendant to enter into this Consent.

28       8. Defendant agrees that this Consent shall be incorporated into the Final

1 Judgment with the same force and effect as if fully set forth therein.

2       9. Defendant will not oppose the enforcement of the Final Judgment on the  
3 ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of  
4 Civil Procedure, and hereby waives any objection based thereon.

5       10. Defendant waives service of the Final Judgment and agrees that entry of  
6 the Final Judgment by the Court and filing with the Clerk of the Court will constitute  
7 notice to Defendant of its terms and conditions. Defendant further agrees to provide  
8 counsel for the Commission, within thirty days after the Final Judgment is filed with  
9 the Clerk of the Court, with an affidavit or declaration stating that Defendant has  
10 received and read a copy of the Final Judgment.

11     11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims  
12 asserted against Defendant in this civil proceeding. Defendant acknowledges that no  
13 promise or representation has been made by the Commission or any member, officer,  
14 employee, agent, or representative of the Commission with regard to any criminal  
15 liability that may have arisen or may arise from the facts underlying this action or  
16 immunity from any such criminal liability. Defendant waives any claim of Double  
17 Jeopardy based upon the settlement of this proceeding, including the imposition of  
18 any remedy or civil penalty herein. Defendant further acknowledges that the Court's  
19 entry of a permanent injunction may have collateral consequences under federal or  
20 state law and the rules and regulations of self-regulatory organizations, licensing  
21 boards, and other regulatory organizations. Such collateral consequences include, but  
22 are not limited to, a statutory disqualification with respect to membership or  
23 participation in, or association with a member of, a self-regulatory organization. This  
24 statutory disqualification has consequences that are separate from any sanction  
25 imposed in an administrative proceeding. In addition, in any disciplinary proceeding  
26 before the Commission based on the entry of the injunction in this action, Defendant  
27 understands that it shall not be permitted to contest the factual allegations of the  
28 complaint in this action.

1       12. Defendant understands and agrees to comply with the terms of 17 C.F.R.  
 2 § 202.5(e), which provides in part that it is the Commission's policy "not to permit a  
 3 defendant or respondent to consent to a judgment or order that imposes a sanction  
 4 while denying the allegations in the complaint or order for proceedings," and "a  
 5 refusal to admit the allegations is equivalent to a denial, unless the defendant or  
 6 respondent states that it neither admit nor denies the allegations." As part of  
 7 Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i)  
 8 will not take any action or make or permit to be made any public statement denying,  
 9 directly or indirectly, any allegation in the complaint or creating the impression that  
 10 the complaint is without factual basis; (ii) will not make or permit to be made any  
 11 public statement to the effect that Defendant does not admit the allegations of the  
 12 complaint, or that this Consent contains no admission of the allegations, without also  
 13 stating that Defendant does not deny the allegations; and (iii) upon the filing of this  
 14 Consent, Defendant hereby withdraws any papers filed in this action to the extent that  
 15 they deny any allegation in the complaint. If Defendant breaches this agreement, the  
 16 Commission may petition the Court to vacate the Final Judgment and restore this  
 17 action to its active docket. Nothing in this paragraph affects Defendant's: (i)  
 18 testimonial obligations; or (ii) right to take legal or factual positions in litigation or  
 19 other legal proceedings in which the Commission is not a party.

20       13. Defendant hereby waives any rights under the Equal Access to Justice  
 21 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other  
 22 provision of law to seek from the United States, or any agency, or any official of the  
 23 United States acting in his or her official capacity, directly or indirectly,  
 24 reimbursement of attorney's fees or other fees, expenses, or costs expended by  
 25 Defendant to defend against this action. For these purposes, Defendant agrees that  
 26 Defendant is not the prevailing party in this action since the parties have reached a  
 27 good faith settlement.

28       14. In connection with this action and any related judicial or administrative

1 proceeding or investigation commenced by the Commission or to which the  
2 Commission is a party, Defendant (i) agrees to appear and be interviewed by  
3 Commission staff at such times and places as the staff requests upon reasonable  
4 notice; (ii) will accept service by mail or facsimile transmission of notices or  
5 subpoenas issued by the Commission for documents or testimony at depositions,  
6 hearings, or trials, or in connection with any related investigation by Commission  
7 staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of  
8 such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives  
9 the territorial limits on service contained in Rule 45 of the Federal Rules of Civil  
10 Procedure and any applicable local rules, provided that the party requesting the  
11 testimony reimburses Defendant's travel, lodging, and subsistence expenses at the  
12 then-prevailing U.S. Government per diem rates; and (v) consents to personal  
13 jurisdiction over Defendant in any United States District Court for purposes of  
14 enforcing any such subpoena.

15       15. Defendant agrees that the Commission may present the Final Judgment  
16 to the Court for signature and entry without further notice.

17       16. Defendant agrees that this Court shall retain jurisdiction over this matter  
18 for the purpose of enforcing the terms of the Final Judgment.

19  
20 Dated: Sept. 14, 2022

Emerald Health Pharmaceuticals Inc.

21 By: \_\_\_\_\_  
22 James L. Neppell  
23 Chairman and Director

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1 Approved as to form:

2 Randall R. Lee

3 Randall R. Lee  
4 Cooley LLP  
5 1333 2nd Street, Suite 400  
6 Santa Monica, CA 9040  
7 (310) 883 6485  
Attorney for Defendant

9-14-22

Date

8 Jina Choi

9 Jina Choi  
10 Morrison & Foerster LLP  
11 425 Market St.  
12 San Francisco, CA 94105  
13 (415) 268-6274  
14 Attorney for Defendant

September 14, 2022

Date

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CONSENT

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